

REMARKS/ARGUMENTS

This is a preliminary amendment in a RCE Application. The Office Action mailed April 9, 2004 has been carefully reviewed. Reconsideration of this application, as amended and in view of the following remarks, is respectfully requested. The claims presented for examination are: claims 1-17.

35 USC 102 Rejection

In the Office Action mailed April 9, 2004, claims 1 and 6 were rejected under 35 USC 102(b) as allegedly being anticipated by Bartoletti. Claim 1 has been cancelled and claim 6 has been amended.

As stated in Verdegaal Bros. v. Union Oil Co. of California, 814 F.2nd 628, 631 USPQ 1051, 1053 (Fed. Cir. 1987), "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference."

Applicants point out that many of the elements of amended claim 6 are not found in the Bartoletti reference. Applicants will provide illustrations of elements of amended claim 6 that are not found in the Bartoletti reference. For example, the following elements are not found in the Bartoletti reference:

"backing-out said software patches that have been applied to said client's systems,"

"checking the permissions and ownership of the files referenced in the patch and ensuring that the system software is authentic,"

"determining which software patches should be installed by determining the needed software patches and the not needed software patches,"

"distributing said needed software patches to said client's systems," and

"installing said needed software patches."

Since many elements of amended claim 6 now presented for examination are not shown by Bartoletti, Applicants submit that the rejection should be withdrawn, amended claim 6 allowed, and the application passed to issue. The Bartoletti Reference is very limited in description of an operational system and concentrates on the problems that exist in software distribution. The Bartoletti Reference does not show a system with the elements of Applicants' amended claim 6.

The Bartoletti Reference

The Bartoletti Reference is an early paper by the inventors in the subject Application, Marcey L. Kelley, Lauri A. Dobbs, and Tony Bartoletti. The paper is a preliminary report describing the project that had been started and eventually produced the invention in the subject patent application. The paper describes the problems that are expected to be encountered and the approach the inventors intended to use in solving the problems. The paper did not describe a working system. The paper states in the Abstract on page 1, "The Secure Software Distribution System (SSDS) will" The paper states on page 6, lines 3-4, "The goal of the project is to develop a proof-of-concept prototype over several phases of development."

McCarthy's Desk Encyclopedia of Intellectual Property, on page 113, in the description of enabling prior art, "To qualify as prior art, a reference must be enabling.... Prior art under 35 USC 102(b) must sufficiently describe the claimed invention to have placed the public in possession of it" In re Donohue, 766 F. 2nd 531, 266 USPQ 619, 612 (Fed. Cir. 1985)



Application No.: 09/964,029

SUMMARY

The undersigned respectfully submits that, in view of the foregoing amendments and the foregoing remarks, the rejections of the claims raised in the Office Action dated April 9, 2004 have been fully addressed and overcome, and the present application is believed to be in condition for allowance. It is respectfully requested that this application be reconsidered, that the claims be allowed, and that this case be passed to issue. If it is believed that a telephone conversation would expedite the prosecution of the present application, or clarify matters with regard to its allowance, the Examiner is invited to call the undersigned attorney at (925) 424-6897.

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Respectfully submitted,

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